

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY VANDIVER,

Plaintiff,

vs.

Case No. 08-CV-10487
HON. GEORGE CARAM STEEH

BRAD TERRILL,
BRIAN WEST,

Defendants.
_____/

ORDER GRANTING, IN PART,
PLAINTIFF'S MOTION FOR RECONSIDERATION (#14) AND REQUIRING
PLAINTIFF TO FILE OBJECTIONS TO THE REPORT AND RECOMMENDATION AS
ON RECONSIDERATION ON OR BEFORE JUNE 16, 2008

Pro se prisoner-plaintiff Jerry Vandiver moves for reconsideration of the court's April 30, 2008 Order accepting Magistrate Judge Charles Binder's March 28, 2008 Report and Recommendation recommending that the court vacate Vandiver's in forma pauperis ("IFP") status because Vandiver had three "strikes" under 28 U.S.C. § 1915(g) before filing this lawsuit, and dismiss Vandiver's claims for failure to pay the filing fee by April 28, 2008. In accepting the Report and Recommendation, the court noted that Vandiver failed to file timely objections.

Vandiver moves for reconsideration arguing he never received copies of the March 28, 2008 Report and Recommendation or the court's April 30, 2008 Order dismissing his claims. Vandiver states that he first learned of the Report and Recommendation upon receiving the defendants' April 25, 2008 withdrawal of their motion for an extension of time

to file responsive pleadings. Vandiver attributes his failure to receive copies of the Report and Recommendation and April 30, 2008 Order to his new residence at Michigan's Huron Valley Mens' Facility.

To prevail on a motion for reconsideration, the movant must demonstrate an error by which the court and the parties have been mislead, and that correction of the error may result in a different disposition of the case. See E.D. Mich. LR 7.1(g)(3). In entering the April 30, 2008 Order, the court relied in part on Vandiver's failure to file timely objections. Vandiver has demonstrated he did not file timely objections because the Report and Recommendation were mailed to his former residence at the Brooks Correctional Facility. See Complaint, at 1 (identifying Vandiver's place of confinement as the "Earnest C. Brooks Correctional Facility"). Although it was and remains Vandiver's responsibility to notify the court of any change of address, correcting the mailing error and permitting Vandiver to submit objections to the Report and Recommendation as on reconsideration is in the best interests of justice, and may result in a different disposition of the case. Accordingly,

IT IS ORDERED that Vandiver's motion for reconsideration is hereby GRANTED, IN PART, to the extent that copies of the March 28, 2008 Report and Recommendation and April 30, 2008 Order shall be mailed to Vandiver's Huron Valley Mens' Facility address along with a copy of this Order.

IT IS FURTHER ORDERED that Vandiver shall file any objections to the Report and Recommendation on or before June 16, 2008, as on reconsideration of the April 30, 2008 Order dismissing his claims.

IT IS FURTHER ORDERED that Vandiver's motion for reconsideration is hereby DENIED, IN PART, to the extent the April 30, 2008 Order dismissing his claims remains

in force and effect until further order of the court.

SO ORDERED.

Dated: May 28, 2008

s/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
May 28, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee

Deputy Clerk